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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 RICARDO MARTINEZ,
12 Petitioner,
13 vs.
14 UNITED STATES OF AMERICA,
15 Respondent.

CASE NOS. 13-CV-0426 BEN
12-CR-3534 BEN-1

**ORDER DENYING
28 U.S.C. § 2255 MOTION**

16 Petitioner Ricardo Martinez moves pursuant to 28 U.S.C. § 2255 for a reduction
17 in his sentence based on his alien status and challenges Bureau of Prisons' policies
18 which preclude him from participating in certain pre-release programs. Both because
19 he waived the right to challenge his sentence and because his Equal Protection
20 argument lacks merit, the Court **DENIES** the motion.

21 **DISCUSSION**

22 **I. WAIVER**

23 The Ninth Circuit recognizes strong public policy considerations justifying the
24 enforcement of a defendant's waiver of his right to appeal or collaterally attack a
25 judgment. *United States v. Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990).
26 Waivers play an important role in the plea bargaining process and help ensure finality.
27 *Id.* at 322. Generally, courts enforce a defendant's waiver of his right to appeal, as long
28 as the waiver was "knowingly and voluntarily made" and "encompasses the

1 defendant's right to appeal on the grounds claimed on appeal." *United States v. Nunez*,
 2 223 F.3d 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266,
 3 1270-71 (9th Cir. 1998)).

4 Petitioner waived his right to collaterally attack his sentence in his plea
 5 agreement. Plea Agreement (Docket No. 18) ¶ XI. The plea agreement states that
 6 Petitioner "waives, to the full extent of the law, any right to appeal or to collaterally
 7 attack his sentence, except a post-conviction collateral attack based on a claim of
 8 ineffective assistance of counsel." *Id.* Petitioner's knowing and voluntary waiver of
 9 his right to collaterally attack his sentence requires denial of his § 2255 motion.

10 II. EQUAL PROTECTION

11 Petitioner filed the present motion under 28 U.S.C. § 2255, but his Equal
 12 Protection challenge to the constitutionality of certain Bureau of Prisons' policies is
 13 better construed as a challenge to the manner in which his sentence is being executed
 14 under 28 U.S.C. § 2241. *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir.
 15 2000) (per curiam) (instructing that petitions challenging the "manner, location or
 16 conditions of a sentence's execution must be brought pursuant to § 2241"); *see also*
 17 *Montano-Figuero v. Crabtree*, 162 F.3d 548, 549 (9th Cir. 1998) (illustrating that
 18 challenges to Bureau of Prisons' policies are challenges to the execution of an inmate's
 19 sentence). Construing his motion liberally, the Court considers Petitioner's Equal
 20 Protection claim under 28 U.S.C. § 2241. *See Zichko v. Idaho*, 247 F.3d 1015, 1020
 21 (9th Cir. 2001) (noting a court's "duty to construe pro se pleadings liberally").

22 Petitioner claims that Bureau of Prisons' policies that prevent him from
 23 participating in certain programs due to his alien status violate his right to Equal
 24 Protection. However, Bureau of Prisons policies preventing deportable aliens from
 25 participating in certain programs survive constitutional challenge. *Cf. McLean v.*
 26 *Crabtree*, 173 F.3d 1176, 1186 (9th Cir. 1999) (finding BOP exclusion of prisoners
 27 with detainers, including INS detainers, from community-based program based on
 28 petitioners' alien status did not violate Equal Protection).

16 || **CONCLUSION**

19 IT IS SO ORDERED.

~~HON. ROGER T. BENTÉZ~~
United States District Judge